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In The

Supreme Court of the United States

October Term, 1986

FRANK J. GUARINI, GERALD McCANN, IRWIN SILVERMAN, JOHN M. STILES, NIDIA DAVILA COLON, HARRY BISHARIAN, AND WALTER IRWIN,

Petitioners,

V.

THE STATE OF NEW YORK, AND THE STATE OF NEW JERSEY,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI ON BEHALF OF RESPONDENT STATE OF NEW JERSEY

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QUESTION PRESENTED

Whether this Court should review a state trial court dismissal of petitioners' suit on grounds of lack of jurisdiction, lack of standing, sovereign immunity and comity, which dismissal was summarily affirmed by the intermediate appellate court and denied review by the New Jersey Supreme Court, when the nature of the original complaint sought nothing less than declarations of border jurisdiction and sovereignty binding on the two states named as defendants, which defendants have declined to litigate any such dispute existing between them.

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OPINIONS BELOW

The opinion below of the New Jersey Superior Court, Chancery Division is reported as *Guarini v. New York,* 215 *N.J. Super.* 426, 521 *A.* 2d 1362 (Ch. Div. 1986). The summary affirmance thereof by the New Jersey Superior Court, Appellate Division is reported at 215 *N.J. Super.* 293, 521 *A.* 2d 1294 (App. Div. 1986). The New Jersey Supreme Court's denial of certification and dismissal of the appeal is not yet reported but it is contained in petitioner's appendix at 1a -2a.

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STATEMENT OF THE CASE

It is undisputed that Ellis and Liberty (formally Bedloe's) Islands are owned exclusively by the federal government and that the Islands are located on the New Jersey side of the New Jersey/New York border, which border was established by the 1834 Compact entered into between New Jersey and New York and approved by Congress. *N.J. Stat. Ann.* § 58:28-1 *et seq.* The underlying problem which formed the basis of plaintiffs' complaint is New York's exercise of sovereignty on Liberty Island by charging New York sales tax for souvenirs purchased thereon. The State of New Jersey although disputing New York's right to charge sales tax on the Islands has chosen not to litigate its claims of sovereignty against New York but rather the Governors of the two states have agreed to propose to their respective legislatures a bistate agreement which essentially splits all tax revenue equally between the states for the exclusive benefit of the homeless. In New

Jersey this legislation has already passed both houses and been signed into law by Governor Kean. *N.J. Stat. Ann.* § 32:32-1 *et seq.;* 1987 *N.J. Sess. Law Serv.* Chapter 57, at 102-115.

Plaintiffs as private citizens sought to litigate the sovereignty issue in a manner which would have altered, indeed voided, a bistate compact and bound both states to the adjudication. Most essential to an informed determination on this petition is a correct understanding of the complaint that was actually dismissed by the New Jersey trial court. Significantly that complaint is nowhere to be found in petitioners' appendix. It is set out in full as an appendix to this brief in opposition. (1a-10a). Petitioners now characterize their suit as essentially a taxpayer's action wherein a declaration of rights under the 1834 Compact was sought. As will be seen, this is a refinement on the tail wagging the dog epigram—it is the tail in animation with the dog nowhere in sight. It is elevation of incidental to primary. It is a misleading characterization of the suit actually attempted.

In the First Count of the complaint plaintiffs recite a history of Ellis and Liberty Islands leading up to a conclusion that the State of New York has deprived the State of New Jersey of tax revenues. "The levy and collection of these tax revenues by the defendant State of New Jersey will lessen the tax burden on plaintiffs by providing greater revenues to the State of New Jersey." (5a, ¶ 17). The First Count goes on to assert a "genuine controversy between the plaintiffs, the defendant State of New Jersey and the defendant State of New York as to the rights of the parties into and over the two parcels of property." (5a, ¶ 18). Plaintiffs assert that the 1834 Compact be-

tween New Jersey and New York did not resolve the controversy. Wherefore plaintiffs sought a declaratory judgment that the State of New York does not possess jurisdiction or sovereignty over Ellis Island, Liberty Island and their accretions but rather that sovereignty and jurisdiction are in New Jersey. Injunctive relief against New York was also requested. (6a).

In the Second Count of the complaint plaintiffs assert that the 1834 Compact, to the extent it can be interpreted as giving New York jurisdiction or sovereignty over the Islands, "is void and ultra vires the powers of the signatories." The relief sought in this count was a declaratory judgment invalidating any "purported grant of jurisdiction of sovereignty to the defendant State of New York by the compact of 1834" and declaring the State of New Jersey as the proper sovereign with jurisdiction. Injunctive relief against New York was again sought. (6a).

In the Third Count plaintiffs note that much of Ellis Island is landfill and sought a declaratory judgment that "accretions and fill to Ellis Island are within the exclusive jurisdiction and sovereignty of the defendant State of New Jersey." Injunctive relief against New York was sought. (7a).

In the Fourth Count is the assertion that a specific individual (Colon) paid $1.35 in taxes to New York for the purchase of various Liberty Island souvenirs. The relief sought, however, is somewhat broader than a return of the $1.35, indeed such relief is nowhere requested. Rather what is sought is a declaratory judgment, "that the defendant the State of New York does not possess jurisdiction or sovereignty over Ellis Island and Liberty Island. . . ." (7a-8a).

In the Fifth Count plaintiffs posit that the State of New York will be unjustly enriched if it is permitted to retain the tax revenues collected on the Islands and therefore a constructive trust should be imposed and future tax collections enjoined. (8a-9a).

The Sixth (and last) Count of the complaint asserts that certain plaintiffs are New Jersey union members who have lost and will continue to lose job opportunities on the Islands because work has been going to New York unions. The final relief demanded is a declaratory judgment that New York does not possess jurisdiction or sovereignty over Ellis and Liberty Islands and that sovereignty and jurisdiction are held by the defendant State of New Jersey. (9a-10a).

The answers to the complaint (11a-24a) highlighted the border dispute existing between New York and New Jersey as well as New Jersey's areas of difference with the plaintiffs. New Jersey denied plaintiffs' allegation that the 1834 Compact did not resolve the historical dispute over the Islands. While admitting its sovereignty over the Islands New Jersey denied plaintiffs' claim that the 1834 Compact was *ultra vires*. New Jersey agreed with the contention that New York was wrongfully exercising its taxing power on the Islands. For its part, New York agreed with New Jersey that the Compact was not *ultra vires* but denied New Jersey's sovereignty while asserting its own. It denied any wrongful taxing. By way of affirmative defenses New Jersey asserted plaintiffs' lacked standing and the New Jersey trial court lacked jurisdiction. New York raised the same defenses and also asserted it was not amenable to suit by virtue of sovereign immunity and comity.

In light of the complaint filed by plaintiffs it is not surprising that the New Jersey trial judge said, "viewed precisely, this case involves either (1) a border dispute or (2) an abrogation or modification of an interstate compact or (3) a declaration of the rights of the party states under the compact." (Pet. 13a). The trial court's conclusion that the issues present, "a classic case for the exercise of original and exclusive jurisdiction of the United States Supreme Court" (Pet. 15a) cannot be seriously disputed.

The complaint was dismissed because the New Jersey Superior Court has no jurisdiction to resolve border disputes between states or to declare the rights of party states under such Compacts. Plaintiffs lacked standing to assert rights or claims which are the prerogatives of sovereign states. Further it was found that the doctrine of sovereign immunity and principles of comity between states, required dismissal of the action.

In the Appellate Division of Superior Court the trial judge's decision was summarily affirmed. (Pet. 3a-7a). In a footnote the Appellate Division added

> Our affirmance of the judgment under review is without prejudice to the right of plaintiff Nidia Davila Colon to seek refund of the $1.35 sales tax paid to the State of New York or the City of New York, as the case may be, in connection with the purchase of items from the concession at Liberty Island in the appropriate New York Court. This issue was not specifically raised before or decided by the trial court and council for the State of New York have recognized plaintiff-Colon's right as an individual to seek such refund. *See Hill v. Joseph,* 205 *Misc.* 441, 129 *N.Y.S.*2d 348 (Supp Ct., special term 1954). [Pet. 7a].

The New Jersey Supreme Court subsequently denied plaintiffs' petition for certification and dismissed the appeal. (Pet. 1a-2a).

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REASONS FOR DENYING THE WRIT

The Writ sought here should be denied because the state courts correctly interpreted and applied the precedents of this Court in light of the plaintiffs' complaint. The judgment issued on separate grounds, each of which supports the result reached and some of which turn primarily, if not exclusively, on state law. *Certiorari* review is not warranted because the constitutional issues raised are frivolous.

A. The Courts Below Correctly Determined That Jurisdiction Was Lacking Because Plaintiffs' Action Essentially Sought Resolution Of A Border Dispute Between Two Sovereign States.

Plaintiffs' complaint sought nothing less than a declaration of sovereignty and jurisdiction over islands which lie in New York Harbor on the New Jersey side of the border line which divides the states. That border, the indicia of sovereignty, was established in an 1834 Compact between New Jersey and New York which agreement was intended to settle the long-term border dispute between the states. In that Compact New York was permitted to "retain its present jurisdiction of and over Bedloe's and Ellis' Islands. . . ." *N.J. Stat. Ann.* § 52:28-3. There is no question but that New Jersey and New York disagree

on the proper interpretation of this statutory language in the Compact. What they do agree on, however, is that any dispute should be settled by negotiation not litigation. Having made that determination private citizens should not be allowed to abrogate it by suing both sovereigns as defendants in state court. If New Jersey or New York had wanted a Court to decide their differences, one of them would have filed a petition directly in this Court as New Jersey once did prior to the 1834 Compact. (For a concise description of the Compact and the history which immediately preceded its enactment *see State v. Carlaftes,* 24 *N.J.* 451, 132 *A.*2d 515 (1957).)

Clearly a border dispute of this nature, if it is to be litigated at all, must be brought only in this Court. The United States Constitution Art. III, § 2 provides in part that, "in all Cases . . . in which a State shall be Party, the supreme Court shall have original Jurisdiction." Congress has provided that in controversies between two or more states the jurisdiction of the Supreme Court is both original and exclusive. 28 *U.S.C.* § 1251(a).

Border disputes are *the* classic case for original and exclusive United States Supreme Court jurisdiction. *See e.g. Rhode Island v. Massachusetts,* 12 *Pet.* 657 (1838). The statement in petitioners' brief that, "the attempt by Congress to define the original and exclusive jurisdiction of the United States Supreme Court by statute is contrary to the Constitution" (p.20) is, at this point in time, nothing short of amazing. The first version of 28 *U.S.C.* 1251(a) came into being with the First Congress, within six months of the inauguration of the Government under the Constitution. The statute itself was drafted by Oliver

Ellsworth, a member of the Constitutional Convention and later Chief Justice of this Court. The legislation was voted upon by many who were personally aware of the discussions within the Constitutional Convention. The statutes stated that the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a state is a party. Judiciary Act, *ch.* 20, 1 *Stat.* 73 (1789); *Ames v. Kansas,* 111 *U.S.* 449, 463-465 (1884). This Court's approval of 28 *U.S.C.* § 1251(a) has remained unchanged. Essentially the statute honors the original thought behind the constitutional language. *Illinois v. City of Milwaukee,* 406 *U.S.* 91 (1972). In Justice Black's concurring opinion in *Durfee v. Duke,* 375 *U.S.* 106, 116 (1963), a suit between private parties concerning border land, he cited to 28 *U.S.C.* § 1251(a) as well as to *U.S. Const.* Art. III, §2 for the proposition, "Neither State, of course, has power to make a determination binding on the other as to which state the land is in." It appears that 198 years of judicial endorsement of and acquiescence in 28 *U.S.C.* 1251(a) is of no consequence to petitioners.

Plaintiffs' remarkable assertion that exclusive original jurisdiction may be unconstitutional is buttressed with a quote from Justice Brennan in *Texas v. New Mexico,* 462 *U.S.* 554 (1983) wherein he noted the Court has discretion in the application of 28 *U.S.C.* 1251(a). Certainly these comments were never intended to authorize the litigation of a border dispute in a state court which would be binding on the states by virtue of their status as defendants. In *Texas v. New Mexico* the two states had entered into the Pecos River Compact to govern the allocation of water from a river which arose in New Mexico and flowed into Texas. The Compact was approved by Congress and its

provisions created a Commission to administer it. A dispute arose as to how much water Texas was entitled to and the Commissioners from each state could not agree on a resolution. Texas then filed an original action against New Mexico in this Court and a Special Master was appointed. The Court's opinion was given in response to the Master's report. In the course of the unanimous opinion Justice Brennan acknowledged the Court's original jurisdiction over Compact disputes between states. He further indicated that if it were clear from the Compact itself that the Commission was to be the exclusive forum for disputes arising under the Compact (which it was not) then the Court would honor that provision. 462 *U.S.* at 569. On the other hand, New Mexico suggested that every decision by the Commission was reviewable by the disappointed state on an original petition to this Court. It was in the context of rejecting this suggestion of wholesale jurisdiction over routine matters that the Court noted it had some discretion under 28 *U.S.C.* 1251(a) and cited two prior cases, one of which (*Maryland v. Louisiana,* 451 *U.S.* 725 (1981)) concerned an attack by the United States as well as individual states on a use tax as violative of the Commerce and Supremacy clauses, the other of which (*Ohio v. Wyandatte Chemicals Corp.,* 401 *U.S.* 493 (1971)) concerned a state's attempt to sue private companys which had created a pollution nuisance. Understandably this Court did not want to become the automatic reviewer of every routine decision issued by the Pecos River Compact Commission with which one state disagreed. In articulating this obvious reluctance and citing other cases involving specific fact patterns, the Court was doing no more than defining the statutory phrase "controversies between

two or more states." It is clear, however, that once the litigation comes within that phrase, this Court's jurisdiction is indeed original and exclusive. Thus in a footnote Justice Brennan said, "the model case for invocation of this Court's original jurisdiction is a dispute between states of such seriousness that it would amount to *casus belli* if the states were fully sovereign. *North Dakota v. Minnesota,* 263 US 365, 372-374, . . . (1923); *Missouri v. Illinois,* 200 US 496, 519-521 . . . (1906)." 462 *U.S.* at 571 n.18.

The *North Dakota* case involved a claim that Minnesota had altered an interstate river in such a way as to cause flooding and destruction of property in North Dakota. The *Missouri* case concerned an allegation that one state was discharging polluted water into another state thereby causing typhoid fever. If these situations are *casus belli,* then a dispute as to which state may exercise sovereignty and jurisdiction over land on their common border must also fall into that category. As a matter of historical fact when the United States Constitution was being drafted ten states were in serious disputes concerning boundaries, land and river rights. During the Court's first sixty years the few state disputes coming before it were exclusively boundary disputes. "Warren, the Supreme Court and Disputes Between States," 34 *Bull. of William and Mary,* No. 4 at 7-14 (1940).

If petitioners' legal analysis were correct this Court's original and exclusive jurisdiction over significant disputes between states would become a nullity. While it is possible to come up with any number of cases where this Court has declined jurisdiction, those cases are not analogous to the present case. There is no decision to be found where this

Court has ever turned away a true boundary dispute between two states or indicated that state courts were a viable option. Thus in *Durfee v. Duke* private parties sued other private parties over who owned land in the Missour River which forms the Missouri/Nebraska boundary line. Justice Stewart writing for a virtually unanimous court said that if private parties litigate the issue of whether certain land is located in one state or another, either state may at any time protect its interest, "by initiating independent judicial proceedings here." 375 *U.S.* at 116. Significantly he did not say that the states might voluntarily join in the state litigation, much less the current proposition that two states can be forced to litigate a border dispute in a state court by naming them as defendants.

No case cited by petitioners stands for the proposition that a state court may adjudicate a dispute between two sovereigns over their exercise of sovereign authority. Reliance upon *Arizona v. New Mexico,* 425 *U.S.* 794 (1976) is misplaced. There, Arizona in its proprietary capacity as a consumer of electrical energy and as *parens patriae* for its citizen consumers, sought to invoke this Court's original jurisdiction. It contended that a New Mexico electrical energy tax imposed on Arizona utilities operating facilities in New Mexico was unconstitutional. This Court declined jurisdiction because the Arizona utilities had previously instituted an action in a New Mexico State Court challenging the New Mexico tax and raising the same constitutional issues that would be presented if Arizona were allowed to proceed in this Court. The pending state court action provided an appropriate forum for litigation of the issues. Certainly, petitioners in the present case are not

aided by *Arizona v. New Mexico.* The state court proceeding which was found to block Arizona's efforts at original jurisdiction did not involve sovereign versus sovereign but rather public utilities versus a state and therefore was properly ongoing in the state court forum. *See e.g., Illinois v. City of Milwaukee,* 406 *U.S.* 91 (1972). To turn *Arizona v. New Mexico* on its head and assert that its supports a claim that a border dispute may be brought in state court is, to say the least, inappropriate.

So too, in *Cissna v. Tennessee,* 246 *U.S.* 289 (1917), another case relied on by petitioners, this Court's review of a state court's interpretation of a Compact as it affects the title rights of private parties does not stand for the proposition that a state court may hear suits involving the sovereign disputes of two states. Note that this Court's reversal in *Cissna* stems from its decision in *Arkansas v. Tennessee,* 246 *U.S.* 158 (1917), a suit within the original jurisdiction of this Court to settle the same boundary at issue in *Cissna.*

The complaint filed by plaintiffs and dismissed by the New Jersey trial court set forth the elements of a classic border dispute. That New Jersey was named as a "necessary defendant" confirms plaintiffs' grand scheme to litigate not a tax question but a boundary question in such a way that both states would be held to the result. New Jersey's answer to the complaint establishes the controversy between sovereign states. The controversy stems from issues of sovereignty that are *casus belli.* This Court has frequently urged negotiations between states rather than litigation. *See e.g., Texas v. New Mexico,* 462 *U.S.* at 575 and *Durfee v. Duke,* 375 *U.S.* at 116 n. 15. This is exactly what New Jersey and New York have attempted to

do through the good faith efforts of their respective governors but plaintiffs feel it is their right to bring both sovereigns before a state court judge to litigate the border between those states. This they cannot do.

B. The New Jersey Trial Court's Determination That Suit Against New York Was Foreclosed By Reason Of Sovereign Immunity And Comity Presents No Basis For A Grant Of The Writ.

Although the absence of jurisdiction was the primary basis for dismissal of the complaint, tht trial court also concluded that principles of sovereign immunity and comity prevented private New Jersey citizens from suing New York State in a New Jersey court, under the particular circumstances of this case. In the intermediate appellate court and in the brief presented to the New Jersey Supreme Court, New Jersey took the position that it would not comment on these issues because they primarily concerned New York. Except for the following limited comments directed only at the propriety of this Court's grant of *certiorari,* New Jersey will continue to leave New York with the laboring oar.

It is apparent from the trial judge's opinion that he drew heavily from *Nevada v. Hall,* 440 *U.S.* 410 (1979) in applying New Jersey law and concluding New York was entitled to the protective mantle of sovereign immunity. To the extent reliance was placed on the majority opinion in *Nevada v. Hall,* the trial court's determination presents no question of constitutional dimension or interpretation of federal law. What is clear from the majority in *Nevada v. Hall,* is that the acceptance of a sister state's claim of sovereign immunity is a matter of state law, not constitu-

tional compulsion. *Id.* at 418-419, 425-427. Accordingly, there is no basis to grant review of this application of New Jersey law and policy.

To the extent that the trial court's opinion can be read as relying on the dissents in *Nevada v. Hall* and implying thereby that something implicit in the United States Constitution requires acceptance of New York's claims of sovereign immunity, there is also no impetus for a grant of *certiorari.* The present case does not arise from a run-of-the-mill tort action which happened to involve a vehicle owned by a sister state. Rather it concerns New York's exercise of an attribute of sovereignty, the taxing power, under a claim of right grounded in a bistate Compact.* Given this context, it is not at all clear that a constitutional analysis reaching a conclusion that sovereign immunity should prevail would in any way be at odds with the majority opinion in *Nevada v. Hall. Id.* at 424, n. 24. In light of the result in this case and absent any indication that the calamitous consequences envisioned by the dissenters in *Nevada v. Hall* (*id.* at 443) have actually occurred, this case is a poor vehicle to reconsider the footings of sovereign immunity.

So too, the trial court's reliance on principles of comity present no basis for review by this Court. By definition comity is a courtesy extended by a forum state to another state. *Philadelphia v. Austin,* 86 *N.J.* 55, 64, 429 *A.*2d 568, 572 (1981). Even an erroneous application of comity in favor of the non-forum state can hardly be said to rise

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* New Jersey's strong disagreement with New York's interpretation of the Compact is not germane to this specific question of sovereign immunity.

above a breach of forum-state policy. It does not implicate constitutional considerations and should not be the subject of review by this Court.

C. The New Jersey Trial Court Correctly Determined As A Matter Of State Law That Plaintiffs Did Not Have Standing To Litigate A Border Dispute Against New York And New Jersey.

The final prong of the trial court's analysis was a determination that plaintiffs had no standing to sue in New Jersey. Although that analysis, of necessity, requires an evaluation of the true nature of the litigation and thus in this case a reaffirmation of the previous conclusion that plaintiffs were seeking declarations of sovereignty, at bottom is the undisputable fact that standing, *vel non,* turns on state law. *Salorio v. Glaser,* 82 *N.J.* 482, 490-491, 414 *A.*2d 943, 947 (1980), app. dism., *cert.* den. 449 *U.S.* 804 (1980). While New Jersey has historically taken a liberal approach to standing, *Crescent Park Tenants Assoc. v. Realty Eq. Corp of N.J.,* 58 *N.J.* 98, 107, 275 *A.*2d 433, 437-438 (1971), even liberality has its limitations. *See e.g., Bergen County v. Port of New York Authority,* 32 *N.J.* 303, 160 *A.*2d 811 (1960).

It cannot be seriously argued that the involvement of a bistate compact in the underlying litigation somehow transforms the standing issue into a matter of federal law or constitutional imperative. Whatever else may be argued over in the 1834 Compact, it certainly does not invite private parties to sue its signatories over its interpretation. In a Republic, as opposed to a pure democracy, some contentions simply cannot be litigated by private citizens. In New Jersey the Governor is constitutionally

charged with enforcement of legislation, *N.J. Const.* (1947), Art. V, § I, ¶ 11, and the New Jersey Attorney General is exclusively authorized to litigate on behalf of the state. *N.J. Stat. Ann.* § 52:17A-4. Moreover petitioners' current contention that New York's taxing authority on the Islands contravenes both the Commerce Clause and the Due Process Clause of the Fourteenth Amendment is nowhere to be found in their complaint. The action that was dismissed contended only that the tax levy was *ultra vires* New York's sovereign and jurisdictional power.

Petitioners' present efforts to focus on plaintiff Colon and her payment of $1.35 in sales tax to New York, ignores what was found to be the primary thrust of the complaint and completely fails to deal with the fact New Jersey was named as a "necessary defendant." New Jersey was a necessary defendant because plaintiffs wished to bind New Jersey to a declaration of sovereignty concerning Ellis and Liberty Islands, not because plaintiff Colon wanted redress for a personal expenditure. Were this merely litigation by private parties to vindicate private interests, which incidentally involved a bistate agreement, there would be little argument over jurisdiction and standing. Such suits have been brought over the years in both New Jersey and New York State Courts. *See e.g. Tennant v. State Bd. Taxes & Assessments,* 95 *N.J.L.* 465, 113 *A.*254 (E.&A. 1921) (Jersey City may tax personal property moored in tidewaters of New York Bay within the territorial limits of New Jersey); *Cook v. Weigley,* 72 *N.J. Eq.* 221, 65 *A.*196 (Ch. 1906) (New Jersey Court has jurisdiction to enforce mortgage foreclosure of islands in New York Harbor on New Jersey side of boundary); *Clarke v. Ackerman,* 243 *App. Div.* 446, 278 *N.Y.S.* 75 (App. Div. 1935) (automobile

negligence action arising out of accident on New Jersey's side of George Washington Bridge where plaintiff made service of process according to New York law); *Ferguson v. Ross,* 126 *N.Y.* 459, 27 *N.E.* 954 (1891) (penalty action brought by New York shore inspector to recover penalty for depositing dredging on New Jersey's side of boundary line).

Perhaps petitioners cling so tenaciously to plaintiff Colon because the other individuals named as plaintiffs, with the possible exception of the union members, show no more relationship to Ellis and Liberty Islands than any other citizen of New Jersey. Thus the plaintiffs have insufficient interest to bring a conventional taxpayer suit much less a full scale attack on a bistate compact and the sovereign rights of New Jersey and New York. Under New Jersey law these plaintiffs do not have even the "slight additional private interest" necessary to afford standing to litigate questions of great public importance. *Salorio v. Glaser,* 82 *N.J.* at 491, 414 *A.*2d at 947.

As to Colon herself, the relief sought in plaintiffs' complaint was not a refund of taxes improperly paid but rather "judgment declaring that the defendant State of New York does not possess jurisdiction or sovereignty over Ellis Island and Liberty Island and the accretions thereto and enjoining . . . New York and its political subdivisions from collecting and levying taxes on Ellis Island and Liberty Island." (8a). A taxpayer should not be permitted standing to sue two sovereign states and seek a declaration of sovereignty binding upon both under the claim that such is the right of anyone who has paid New York sales tax on the islands. As the New Jersey Appellate Division indicated in a footnote, Colon may very well have a legiti-

mate lawsuit against New York taxing authorities but the complaint must be recast without New Jersey as a necessary party and should be brought in a New York State Court.

Finally, as to the New Jersey union members who claim a loss of work because New York union members are employed instead of New Jersey union members, one can only wonder how this purported problem is necessitated by New Jersey and New York's dispute over the Islands or indeed how such a problem may be litigated in the absence of the unions as parties. Private labor unions are free to allocate territorial work on any bases they choose. Exactly how conflicting sovereignty claims between New Jersey and New York resulted in a situation favoring New York unions is not explained. At first blush it would seem a border dispute between New Jersey and New York would leave the unions in equipoise or perhaps urge them to look further for resolution of their territorial dispute. If a certain union chooses to ignore the boundary line which indisputably puts the Islands within New Jersey's territory, in favor of New York's claim of extraterritorial jurisdiction, it would seem that is a matter for debate between unions and employers in light of the respective contracts and rules which govern their relationship. Because private entities cannot agree on private rights is no reason to seek declarations of sovereignty binding upon both states. It is a basis for private litigation which will settle private rights without also implicating the sovereignty of adjacent states.

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CONCLUSION

For the foregoing reasons the petition for a writ of *Certiorari* in this case should be denied.

Respectfully submitted,

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By: James J. Ciancia
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Counsel of Record

Dated: May 26, 1987

APPENDIX

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION : HUDSON COUNTY

MARGULIES, MARGULIES & WIND
A Professional Corporation
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(201) 963-0700
Attorneys for plaintiffs

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Of counsel for plaintiffs

FRANK J. GUARINI, Member of the House of Representatives, GERALD McCANN, Mayor of the City of Jersey City, DR. IRWIN SILVERMAN, ROBERT J. DEL TUFO, DR. LENA EDWARDS, JOHN M. STILES, REV. RAYMOND J. KUPKE, NIDIA DAVILA COLON, DR. SANG JIN KIM, HARRY BISHARIAN and WALTER IRWIN,	Docket No.
Plaintiffs,	Civil Action
vs.	COMPLAINT
THE STATE OF NEW YORK,	
Defendant,	
- and -	
THE STATE OF NEW JERSEY, a necessary defendant.	

Plaintiffs, Frank J. Guarini, residing at 201 St. Pauls Avenue, Jersey City, New Jersey 07306; Gerald McCann, residing at 210 Gates Avenue, Jersey City, New Jersey 07305; Dr. Irwin Silverman, residing at 911 Boulevard East, Weehawken, New Jersey; Robert J. Del Tufo, residing at 35 Colles Avenue, Morristown, New Jersey 07960; Dr. Lena Edwards, residing at 821 Woodland Drive, Lakewood, New Jersey 08701; John M. Stiles, residing at 5 Kaufman Drive, Westwood, New Jersey 07675; Rev. Raymond J. Kupke, residing at 18 Changebridge Road, Montville, New Jersey 07047; Nidia Davila Colon, residing at 338 Second Street, Jersey City, New Jersey 07302; Dr. Sang Jin Kim, residing at 108 Eagle Ridge Drive West Orange, New Jersey 07052, Harry Bisharian, residing at 337 Lucy Drive, New Milford, New Jersey 07646 and Walter Irwin, residing at 8 Hilltop Lane, Succasunna, New Jersey 07876, by way of complaint against defendant, say:

FIRST COUNT

1. Plaintiffs are residents, citizens and taxpayers of the defendant State of New Jersey.

2. On or about March 12, 1664 Charles II granted territory to James, Duke of York, that extended along the Atlantic coast and included the territory that is today the State of New Jersey and the State of New York.

3. On or about June 24, 1664 James, Duke of York, conveyed by a deed of release to Lord Berkeley and Sir George Carteret proprietorship in New Jersey which was described as the area between the sea and the Hudson River on the east and the Delaware River on the west.

4. The territory granted to the Duke of York was recognized by the Dutch in 1673. After the rule of Great Britain was restored, Charles II in 1674 granted the same domain to the Duke of York as was granted in the Charter of 1664.

5. In 1674 the Duke of York reconveyed the eastern parts of New Jersey to Sir George Carteret and later the western parts to the grantees of Lord Berkeley on the same terms as the previous grant.

6. Following the partition of East Jersey and West Jersey and the death of Sir George Carteret, a conveyance of East Jersey was made to twenty-four proprietors in 1682. In 1683 the Duke of York made a confirmatory grant to the twenty-four proprietors of East Jersey.

7. In 1685 James, Duke of York, succeeded to the British Crown and any and all rights to the Hudson River and the islands therein then held by the Duke of York were reannexed to the Crown.

8. In 1702 the proprietors surrendered all governmental powers to Queen Anne, acknowledging that all future governmental powers belonged to the Crown. The proprietors did not relinquish title to private property, including title to Ellis Island and Liberty Island.

9. From 1702 until the independence of the State of New Jersey and State of New York from British rule all sovereignty, jurisdiction and *jura regalia* over the Hudson River belonged to the British crown.

10. When the State of New Jersey and the State of New York became independent States, the sovereignty, jurisdiction and rights to that part of the Hudson River

that forms the boundary between the two States was divided under the precepts of international law such that all territory east of the middle of the river falls within the State of New York and all territory west of the middle of the river falls within the State of New Jersey.

11. Two parcels of property, Ellis Island and Liberty Island (formerly known as Bedloe's Island), were at the time of the formation of the defendant State of New York and the defendant State of New Jersey located on the New Jersey side of the Hudson River and fell under the territorial jurisdiction and sovereignty of the defendant State of New Jersey.

12. In 1834 a compact was entered into between the defendants (*N.J.S.A.* 52:28-1, et seq.; 56 *McKinney's State Laws,* section 7), pertaining to jurisdiction over Ellis Island and Liberty Island.

13. At the time the compact was entered into between defendants, Ellis Island was approximately 3 acres in size. Subsequent to the compact, landfill to the island below the water line has increased the size of Ellis Island by approximately 24.5 acres.

14. The defendant State of New York has wrongfully exercised and continues to exercise jurisdiction and sovereignty over Ellis Island and Liberty Island purportedly pursuant to the compact of 1834 by engaging in the following activities: (a) levying sales taxes on the islands and collecting those taxes; (b) levying state income tax on persons residing or working on the islands and collecting those taxes; and (c) exercising police powers over the islands and the persons who live and work on the islands or visit the islands.

15. The compact entered into between defendant States in 1834 did not vest the defendant State of New York with jurisdiction or sovereignty over Ellis Island and Liberty Island.

16. The levy and collection of taxes on Ellis Island and Liberty Island, including the taxation of sales and business transactions on those islands by the defendant State of New York and its political subdivisions, has deprived and will continue to deprive the defendant State of New Jersey of tax revenues.

17. The levy and collection of these tax revenues by the defendant State of New Jersey will lessen the tax burden on plaintiffs by providing greater revenues to the State of New Jersey.

18. There is a genuine controversy between the plaintiffs, the defendant State of New Jersey and the defendant State of New York as to the rights of the parties in, to and over the two parcels of property.

19. The controversy was not resolved when litigation was instituted in the United States Supreme Court by the defendant State of New Jersey in 1829.

20. The controversy was not resolved by the 1834 compact which, among other things, provided in Article II that New York should "retain its present jurisdiction," whatever that may have been, if any, over the two parcels.

21. There are presently proposals under consideration for the development of the two parcels warranting that a determination be made fixing and declaring the rights of the State of New York, if any, in, to and over the two parcels.

WHEREFORE, plaintiffs seek a judgment declaring that pursuant to the compact of 1834 or independent thereof the defendant State of New York does not possess jurisdiction or sovereignty over Ellis Island and Liberty Island and the accretions thereto and that sovereignty and jurisdiction are within the defendant State of New Jersey and enjoining the State of New York and its political subdivisions from collecting and levying taxes on Ellis Island and Liberty Island or exercising police power.

SECOND COUNT

1. Plaintiff adopt the paragraphs set forth in the First Count.

2. The lands under the sovereignty of the defendant State of New Jersey have at all times, pursuant to the laws of New Jersey, been held in trust by the sovereign for the benefit of the people of the State of New Jersy, and plaintiffs are among the direct beneficiaries of this trust.

3. The compact of 1834 entered into by the defendants, to the extent that it can be interpreted and construed as giving the defendant State of New York jurisdiction or sovereignty over Ellis Island and Liberty Island and the accretions thereto, is void and ultra vires the powers of the signatories.

WHEREFORE, plaintiffs seek judgment declaring invalid the purported grant of jurisdiction or sovereignty to the defendant State of New York by the compact of 1834 and that sovereignty and jurisdiction are within the defendant State of New Jersey and enjoining the defendant State of New York and its political subdivisions from collecting and levying taxes on Ellis Island and Liberty Island or exercising police power.

THIRD COUNT

1. Plaintiffs adopt the paragraphs set forth in the first and second counts.

2. The landfill and accretions to Ellis Island, consisting of approximately 24.5 acres, fall within the territorial jurisdiction and the sovereignty of the defendant State of New Jersey under the terms of the compact of 1834.

WHEREFORE, the plaintiffs seek a judgment declaring that the accretions and fill to Ellis Island are within the exclusive jurisdiction and sovereignty of the defendant State of New Jersey and enjoining the defendant State of New York and its political subdivisions from collecting and levying taxes on that portion of Ellis Island or exercising police power.

FOURTH COUNT

1. Plaintiffs adopt the paragraphs set forth in the first, second and third counts.

2. On November 8, 1984 plaintiff Nidia Davila Colon purchased the following items on Liberty Island, a replica of the Statute of Liberty, a banner and a souvenir plate.

3. Incident to the purchase of said item, plaintiff was required to pay $1.35 sales tax to the State of New York and its political subdivisions pursuant to the asserted sovereignty and jurisdiction over Liberty Island by the defendant State of New York.

4. The collection and levy of these taxes by the defendant State of New York and its political subdivisions was ultra vires its sovereign and jurisdictional power.

5. Plaintiff was injured in that she was compelled to pay taxes that were due to the defendant State of New Jersey to the defendant State of New York and its political subdivisions. The amount paid by plaintiff to the defendant State of New York and its political subdivisions was greater than that which she would have been required to pay to the defendant State of New Jersey.

WHEREFORE, plaintiff seeks judgment declaring that the defendant State of New York does not possess jurisdiction or sovereignty over Ellis Island and Liberty Island and the accretions thereto and enjoining the defendant State of New York and its political subdivisions from collecting and levying taxes on Ellis Island and Liberty Island.

FIFTH COUNT

1. Plaintiffs adopt the paragraphs set forth in the first, second, third and fourth counts.

2. The defendant State of New York has acquired tax revenues from Ellis Island and Liberty Island and from persons who live or work on Liberty Island and Ellis Island that rightfully belong to the defendant State of New Jersey.

3. Retention of those tax revenues by the State of New York will result in unjust enrichment of that defendant.

WHEREFORE, plaintiffs demand judgment imposing a constructive trust on all tax revenues heretofore and hereafter collected by the defendant State of New York that were or are collected on Liberty Island and Ellis Island and that were or are collected from persons who

live or work on Liberty Island and Ellis Island and a restraint from future collection of such taxes.

SIXTH COUNT

1. Plaintiffs adopt the paragraphs set forth in the first, second, third, fourth and fifth counts.

2. Plaintiffs Harry Bisharian and Walter Irwin are members of the United Association of Plumbers, Pipe Fitters and Sprinkler Fitters, Local 274, AFL-CIO, located in Ridgefield, New Jersey.

3. Two Hundred and Fifty Million Dollars ($250,000,000.00) is anticipated to be spent on the renovation of the Statue of Liberty and Ellis Island. Jobs related to the restoration of Liberty Island and Ellis Island have been awarded to New York Unions pursuant to the territorial and jurisdictional claims of the defendant State of New York.

4. The award of labor contracts to unions located in the defendant State of New York has resulted in the loss of job opportunities for plaintiffs Harry Bisharian and Walter Irwin.

5. Future construction and restoration of Liberty Island and Ellis Island will require the employment of members of labor unions, and the decision of which local union will be employed will be based on the sovereignty and jurisdiction of defendants over Ellis Island and Liberty Island.

WHEREFORE, plaintiffs demand judgment declaring that the defendant State of New York does not possess jurisdiction or sovereignty over Ellis Island and Liberty

Island and the accretions thereto and that sovereignty and jurisdiction are held by the defendant State of New Jersey.

MARGULIES, MARGULIES & WIND
A Professional Corporation

/s/ Seymour Margulies
By: Seymour Margulies
Attorney for plaintiffs

MAURICE C. BRIGADIER, ESQ.

/s/ Maurice C. Brigadier
By: Maurice C. Brigadier
Of counsel
On the pleading:
Clifford A. Herrington

DATED:

CERTIFICATION PURSUANT TO RULE 4:5-1

It is hereby certified that this matter is not the subject of any other action pending in any Court or of a pending arbitration proceeding and no such other action or arbitration is presently contemplated. Plaintiffs are unaware of any other party who should be joined in the action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Seymour Margulies

Dated:
CAH/sr
11/09/84
elis islecom
abel: octob84

FRANK J. GUARINI, GERALD McCANN, DR. IRWIN SILVERMAN, ROBERT J. DEL TUFO, DR. LENA EDWARDS, JOHN M. STILES, REV. RAYMOND J. KUPKE, NIDIA DAVILA COLON, DR. SANG JIN KIM, HARRY BASHARIAN and WALTER IRWIN, Plaintiffs, v. THE STATE OF NEW YORK, Defendant, and THE STATE OF NEW JERSEY, A Necessary Defendant.	Superior Court of New Jersey Chancery Division Hudson County Docket No. ANSWER Filed 10/18/85

Defendant, the State of New Jersey, by way of answer to the complaint, says:

FIRST COUNT

1. On information and belief the State admits the allegations of paragraph 1 of the First Count of the Complaint.

2. On information and belief the State admits the allegations of paragraph 2.

3. On information and belief the State admits the allegations of paragraph 3.

4. On information and belief the State admits the allegations of paragraph 4.

5. On information and belief the State admits the allegations of paragraph 5.

6. On information and belief the State admits the allegations of paragraph 6.

7. On information and belief the State admits the allegations of paragraph 7.

8. On information and belief the State admits the allegations of paragraph 8.

9. On information and belief the State admits the allegations of paragraph 9.

10. On information and belief the State admits the allegations of paragraph 10.

11. On information and belief the State admits the allegations of paragraph 11.

12. On information and belief the State admits the allegations of paragraph 12.

13. On information and belief the State admits the allegations of paragraph 13.

14. The State joins in the allegations contained in paragraph 14, except it denies information and knowledge that the State of New York has wrongfully exercised police powers over the islands and the persons who live on, work on, or visit the islands.

15. The State neither admits nor denies the allegations of paragraph 15, but relies upon the terms of the 1834 compact.

16. The State joins in the allegations contained in paragraph 16 of the First Count of the Complaint.

17. The State joins in the allegations contained in paragraph 17 of the First Count of the Complaint.

18. The State admits the allegations contained in paragraph 18.

19. The State admits that a bill filed against the State of New York in the United States Supreme Court in 1829 was dismissed and that the issues raised by that bill were not resolved by the Supreme Court as stated in the allegations of paragraph 19.

20. The State asserts that the 1834 compact did resolve and settle the respective rights of New York and New Jersey to the islands in question and denies the allegations of paragraph 20.

21. The State admits the allegations of paragraph 21 of the First Count of the Complaint.

SECOND COUNT

1. The State repeats its responses to the First Count.

2. The State admits the allegations of paragraph 2 of the Second Count of the Complaint.

3. The State neither admits nor denies plaintiffs' interpretation of the 1834 compact, but denies that the compact is void and *ultra vires* of the powers of the signatories as stated in the allegations of paragraph 3.

THIRD COUNT

1. The State repeats its response to the First and Second Counts as if set forth at length herein.

2. The State admits the allegations of paragraph 2 of the Third Count of the Complaint.

FOURTH COUNT

1. The State repeats its responses to the First, Second and Third Counts.

2. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2.

3. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.

4. While having no knowledge as to the collection of the specific taxes as alleged in paragraph 4, the State adopts the position that the collection and levy of taxes by defendant New York and its political subdivisions is *ultra vires* its sovereign and jurisdictional powers.

5. The State lacks knowledge or information sufficient to form an opinion as to the allegations of paragraph 5 of the Fourth Count of the Complaint.

FIFTH COUNT

1. The State repeats its responses to the First, Second, Third and Fourth Counts.

2. The State adopts the allegations of paragraph 2 of the Fifth Count of the Complaint.

3. The State adopts the allegations of paragraph 3 of the Fifth Count of the Complaint.

SIXTH COUNT

1. The State repeats its responses to the First, Second, Third, Fourth and Fifth Counts.

2. The State is without knowledge or information sufficient to form an opinion as to the allegations of paragraph 2 of the Sixth Count.

3. The State admits that renovations and alterations to the Statue of Liberty are underway and that developments on the two islands are being considered, but lacks knowledge or information sufficient to form an opinion as to the remaining allegations of paragraph 3.

4. The State lacks knowledge or information sufficient to form an opinion as to the allegations of paragraph 4 of the Sixth Count of the Complaint.

5. The State lacks knowledge or information sufficient to form an opinion as to the allegations of paragraph 5 of the Sixth Count of the Complaint.

FIRST DEFENSE

The complaint raises a boundary dispute and a dispute as to the respective sovereignty of defendants the State of New York and the State of New Jersey and jurisdiction properly lies in the United States Supreme Court.

SECOND DEFENSE

The Complaint fails to state a cause of action upon which relief may be granted.

THIRD DEFENSE

This action is barred by the Eleventh Amendment to the United States Constitution.

FOURTH DEFENSE

Plaintiffs lack standing to raise the issues specified in their complaint.

WHEREFORE defendant, the State of New Jersey, demands judgment dismissing the complaint, together with costs of suit and such other relief as the Court deems just and proper.

IRWIN I. KIMMELMAN
Attorney General of New Jersey

By: /s/ Dorothy Donnelly
Dorothy Donnelly
Deputy Attorney General
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FRANK J. GUARINI, Member of the House of Representatives, et al.,	)	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: HUDSON COUNTY DOCKET NO. C-4776-84
Plaintiffs,	)	
vs.	)	
THE STATE OF NEW YORK and THE STATE OF NEW JERSEY,	)	ANSWER
	)	Filed 10/16/85
Defendants.	)	

Defendant, State of New York, by its attorneys, Robert Abrams, Attorney General of the State of New York, and Clemente, Strenk & Kiernan, in answer to the Complaint herein alleges as follows:

AS TO THE FIRST COUNT

1. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

2. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

3. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

4. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

5. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

6. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

7. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

8. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

9. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

10. Denied.

11. Denied.

12. It denies each and every allegation contained in this paragraph and respectfully refers the Court to

Twenty-third Congress, Act of June 28, 1834 (4 U.S. Stat. 708, Ch. 126).

13. Admitted.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

WHEREFORE, defendant State of New York demands judgment dismissing the Complaint against it with costs and fees.

AS TO THE SECOND COUNT

1. It repeats and realleges each and every answer to the allegations of the previous Count as if set forth at length herein.

2. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

3. Denied.

WHEREFORE, defendant State of New York demands judgment dismissing the Complaint against it with costs and fees.

AS TO THE THIRD COUNT

1. It repeats and realleges each and every answer to the allegations of the previous Counts as if set forth at length herein.

2. Denied.

WHEREFORE, defendant State of New York demands judgment dismissing the Complaint against it with costs and fees.

AS TO THE FOURTH COUNT

1. It repeats and realleges each and every answer to the allegations of the previous Counts as if set forth at length herein.

2. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

3. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

4. Denied.

5. Except to state that it is without knowledge or information sufficient to form a belief as to the truth of the allegations that plaintiff Nidia Davila Colon paid any taxes at all to the State of New York and that the State of New Jersey would have required her to pay an amount of taxes that was less than she allegedly paid to the State of New York, it denies each and every remaining allegation contained in this Paragraph.

WHEREFORE, defendant State of New York demands judgment dismissing the Complaint against it with costs and fees.

AS TO THE FIFTH COUNT

1. It repeats and realleges each and every answer to the allegations of the previous Counts as if set forth at length herein.

2. Denied.

3. Denied.

WHEREFORE, defendant State of New York demands judgment dismissing the Complaint against it with costs and fees.

AS TO THE SIXTH COUNT

1. It repeats and realleges each and every answer to the allegations of the previous Counts as if set forth at length herein.

2. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

3. Except to deny any implication that the defendant, State of New York, has awarded any contract to "New York Unions," it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this Paragraph.

4. Denied.

5. Denied.

WHEREFORE, defendant State of New York demands judgment dismissing the Complaint against it with costs and fees.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Service of process is insufficient.

THIRD DEFENSE

This Court lacks personal jurisdiction over the defendant, State of New York.

FOURTH DEFENSE

This Court lacks subject matter jurisdiction over this action.

FIFTH DEFENSE

Plaintiffs lack proper standing to sue.

SIXTH DEFENSE

The Complaint fails to set forth a ripe case or controversy.

SEVENTH DEFENSE

This action is barred by the statutes of limitations.

EIGHTH DEFENSE

This action is barred by the doctrine of laches.

NINTH DEFENSE

This action is barred by the doctrine of sovereign immunity.

TENTH DEFENSE

This action is barred by the doctrine of "full, faith and credit."

ELEVENTH DEFENSE

This action is barred by the doctrine of "comity."

TWELFTH DEFENSE

This action is barred by collateral estoppel.

THIRTEENTH DEFENSE

This action is barred by the doctrine of prescription and acquiescence.

WHEREFORE, defendant State of New York demands judgment dismissing the Complaint against it with costs and fees.

CLEMENTE, STRENK & KIERNAN
Attorneys for Defendant
State of New York

By: /s/ Jeffrey P. Clemente
Jeffrey P. Clemente

ROBERT ABRAMS
Attorney General of the
State of New York

By: /s/ Judith T. Kramer
Judith T. Kramer
Assistant Attorney General

DATED: October 15, 1985

R.4:5-1 CERTIFICATION

The undersigned does hereby certify that the matter in controversy is not the subject of any other action pending or presently contemplated in any other court or of a pending or presently contemplated arbitration proceeding.

/s/ Jeffrey P. Clemente
Jeffrey P. Clemente

CERTIFICATION

The undersigned does hereby certify that the within pleading has been duly filed and served within the time prescribed by the New Jersey Rules of Court.

/s/ Jeffrey P. Clemente
Jeffrey P. Clemente

DATED: October 15, 1985
BK14:T